

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed March 17, 2005. Reconsideration and allowance of the application and presently pending claims 1-33 are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-33 remain pending in the present application. It is believed that the foregoing amendments and additions add no new matter to the present application.

2. Allowable Subject Matter

Applicants appreciate the Examiner's indication that claims 14-21 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims. However, Applicants have not amended these claims 14-21 in this response because the Applicants believe, for the reasons detailed below, that the parent claims from which claims 14-21 depend are allowable over the cited art.

3. Specification Objection

The specification has been objected to for containing various informalities. Specifically, the Office Action indicates that the Specification is deficient under 37 CFR 1.77, (c), which requires that the "text of the specification sections defined in paragraphs (b)(1) through (b)(11) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type," since section demarcations are provided.

In response to the objection, Applicants have amended the specification to include the requisite section headings. Although these amendments effect various changes to the specification, it is respectfully asserted that no new matter has been added. Furthermore, various editorial amendments are made to the Specification. In view of these amendments, Applicants respectfully submit that the Specification is not objectionable, and therefore respectfully request that the objection be withdrawn.

Furthermore, Applicants note that the originally submitted Abstract consisted of 210 words, which exceeds the maximum statutory word limit. Accordingly, Applicants have amended the Abstract to have total word count well within the maximum limit of 150 words. Furthermore, Applicants submit that the Abstract is neither intended to define the present

invention, which is measured by the claims, nor is it intended to be limiting as to the scope of the invention in any way.

4. Specification Objections - 35 U.S.C. § 112, First Paragraph

35 U.S.C. 112, first paragraph, would require “that the specification to be written in ‘full, clear, concise, and exact terms.’ The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: ‘image’ in line 12 on page 2, ‘artefacts’ in line 26 on page 2 and ‘whilst’ in line 7 of the abstract. Albeit some of these terms common to the British version of the English language, corrections would enable this application's disclosure to be easily found in the examination of other future applications.”

With respect to the object to term “image” at page 2, line 12, Applicants have amended the term to read as “images” to overcome the rejection of that term. Accordingly, Applicants respectfully request withdrawal of the objection with respect to the above-described term.

Applicants respectfully traverse the rejection above with respect to those terms particular to the British English spellings. MPEP §608.01 states that “Examiners should not object to the specification and/or claims in patent applications merely because applicants are using British English spellings (e.g., colour) rather than American English spellings. It is not necessary to replace the British English spellings with the equivalent American English spellings in the U.S. patent applications. Note that 37 CFR 1.52(b)(1)(ii) only requires the application to be in the English language. There is no additional requirement that the English must be American English.” Since British English spellings are permissible in the Specification, Applicants respectfully requests that the objection be withdrawn.

5. Response to Rejection of Claims 1-4 Under 35 U.S.C. §102(b)

In the Office Action, claims 1-4 stand rejected under 35 U.S.C. §102(b) as allegedly being unpatentable by *Shigeo* (JP 10-304231), hereinafter *Shigeo*. For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

Applicants respectfully submit that independent claim 1 is allowable for at least the reason that *Shigeo* does not disclose, teach, or suggest the feature of displaying “assigning a

quality factor to each image, the quality factor being representative of the composition quality of the analysed images" as recited in claim 1.

Applicants believe that *Shigeo* does not disclose, teach, or suggest using any type of quality factor in the Abstract, repeated below for the convenience of the Examiner (emphasis added):

SOLUTION: An image obtained from an image input section 301 including an image pickup means is stored in an image memory 302. When a residual amount calculation section 308 detects that the *residual capacity of the image memory* 302 is small, an image recording discrimination section 306 compares the residual capacity with a *capacity equivalent to an image size* in the image pickup mode at that time obtained from an image size table 307 to discriminate the propriety as to whether or not the image pickup is able to be continued. When the image pickup is disable, an image selection section 304 selects an old image or an image with a *small color number based on management data relating to the image* having already been photographed in a storage management table 303. The selected image is transmitted by the personal handy phone system (PHS) communication by means of a data transmitter 305. The image after the transmission is deleted from the image memory 302.

Here, the *Shigeo* "residual capacity" of the image memory 302 is not related whatsoever to a "quality factor being representative of the composition quality of the analysed images" as recited in claim 1, but rather, is related to memory capacity. Similarly, the *Shigeo* "capacity equivalent" to an image size is not related whatsoever to a "quality factor being representative of the composition quality of the analysed images" as recited in claim 1. Also, the "small color number based on management data relating to the image" is not related whatsoever to a "quality factor being representative of the composition quality of the analysed images" as recited in claim 1. Rather, the *Shigeo* small color number is a number relating to management of data. Accordingly, there is no disclosure whatsoever of a quality factor being representative of the composition quality of the analysed images in the *Shigeo* Abstract.

As noted above, *Shigeo* paragraphs 0079 and 0080, provided with the Office Action, is published in the Japanese language. Applicants have retrieved a translation from the Japanese Patent Office website for *Shigeo* paragraphs 0079 and 0080, repeated below for the Examiner's convenience:

[0079] Moreover, according to invention of claims 2, 3, 4, 5, 6, 13, 14, 15, and 16, when choose an image, and transmitting or processing, by making into a selection condition the old thing of photography, what has few access frequency, the thing which has the few color number, what has many color

numbers, only the unnecessary image by few images and poor photography of an application etc. can be transmitted, or it can process.

[0080] Moreover, according to invention of claims 7 and 17, the priority for performing the above-mentioned transmission or processing to a photography image can be attached by adding marking to the photoed image and considering as the above-mentioned selection condition.

With respect to *Shigeo* paragraph 0079, the most that is disclosed are “color numbers.” However, it is clear from the *Shigeo* Abstract, which states that a color number is “based on management data relating to the image.” Management data is different from the recited quality factor associated with the image. Thus, *Shigeo* paragraph 0079 does not disclose, teach, or suggest the feature of displaying “assigning a quality factor to each image, the quality factor being representative of the composition quality of the analysed images” as recited in claim 1.

With respect to *Shigeo* paragraph 0080, the most that is disclosed are “above-mentioned transmission or processing to a photography image can be attached by adding marking to the photoed image and considering as the above-mentioned selection condition.” No mention of any type of quality factor is made in *Shigeo* paragraph 0080. Thus, *Shigeo* paragraph 0080 does not disclose, teach, or suggest the feature of displaying “assigning a quality factor to each image, the quality factor being representative of the composition quality of the analysed images” as recited in claim 1.

Therefore, *Shigeo* as used to reject claim 1, simply does not disclose, teach or suggest a “quality factor being representative of the composition quality of the analysed images” as recited in claim 1. Thus, *Shigeo* does not anticipate claim 1, and the rejection should be withdrawn.

However, if the Examiner believes that the Applicants have misinterpreted the Japanese Patent Office provided translation of *Shigeo* paragraphs 0079 and 0080, or if the Examiner has a different English translation upon which the rejection was based, Applicants respectfully request clarification in the next Office Action. It would be most helpful if the Examiner could provide the Applicants a copy of the English translation of *Shigeo* paragraphs 0079 and 0080 which was actually used to base the rejection upon.

Because independent claim 1 is allowable over the cited art of record, dependent claims 2-4 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 2-4 contain all features/elements of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to claims 2-4 should be withdrawn.

7. Response to Rejection of Claims 5-13 and 22-33 Under 35 U.S.C. §103

In the Office Action, claims 5-9, 13, 23-29 and 32 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Shigeo* in view of *Cosatto et al.* (U.S. Patent 6,118,887), hereinafter *Cosatto*. Claims 11, 12 and 31 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Shigeo* in view of *Cosatto* further in view of *Isadore-Barreca et al.* (U.S. Patent 6,205,23), hereinafter *Isadore-Barreca*. Claims 22 and 33 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Shigeo* in view of *Parulski et al.* (U.S. Patent 5,440,343), hereinafter *Parulski*. Claims 10 and 30 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Shigeo* in view of *Cosatto* further in view of *Hunke* (U.S. Patent 5,912,980).

It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Claims 5-13 and 22-23

Because independent claim 1 is allowable over the cited art of record, dependent claims 5-13 and 22-23 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 5-13 and 22-23 contain all features/elements of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to claims 5-13 and 22-23 should be withdrawn.

b. Claims 24-28

Applicants respectfully submit that claims 24-28 are allowable for at least the reason that the proposed combination of *Shigeo* in view of *Cosatto* does not disclose, teach, or suggest at least the feature of “updating the memory to maintain images for which the assigned *quality factor* indicates a *higher composition quality* than an image captured at an earlier time” as recited in claim 24 (emphasis added) or the feature of “processor being further arranged to update the memory to maintain images for which the assigned *quality factor* indicates a *higher composition quality* than an image captured at an earlier time” as recited in claims 25 and 26 (emphasis added), the feature of “assigning a *quality factor* to each image, the quality

factor being *representative of the composition quality of the analysed images*” as recited in claim 27 (emphasis added), or the feature of “assigning a *quality factor* to each image in each of the at least one sets, the quality factor being *representative of the composition quality* of the analysed image content” as recited in claim 28 (emphasis added).

Shigeo does not disclose, teach, or suggest using at least any type of quality factor being representative of the composition quality. The Examiner is respectfully referred above to the arguments for allowability of claim 1 which demonstrates that there is no disclosure whatsoever of a quality factor being representative of the composition quality in the *Shigeo*.

Cosatto also fails to disclose, teach or suggest at least any type of quality factor being representative of the composition quality. The Office Action alleges that “*Cosatto* discloses motion tracking based on quality values from multiple detection methods (Column 6 Lines 52-56).” However, *Cosatto* at Column 6, lines 52-56, is limited to disclosing that “in making its channel selection based on general scores, the controller may select the channel(s) with the highest score(s). Alternatively, the controller may take additional variables into account, such as the relative speeds of the individual channels, before making its selection.” There is no “quality value” disclosed in this cited portion of *Cosatto* as alleged by the Office Action.

Cosatto is limited to selecting channels. *Cosatto* teaches, at most, “in the next step 21 depicted in FIG. 1b by the box 100, the system controller determines which channels to select for further tracking. The selection is made based on the results of the n-gram search described above. In a preferred embodiment, the controller determines a general score Y1, Y2, Ys for each channel 11, 12, and 13. The determination of the general score facilitates the selection process.. Preferably, the system controller computes these general scores from the measures of confidence determined by the system classifies for individual features and combinations in the n-gram search.” (Col. 6, lines 39-50). Thus, *Cosatto* fails to disclose, teach or suggest every element of the Applicants’ claimed invention.

Even if *Shigeo* is modified by the teaching of *Cosatto*, the modified *Shigeo* system would be limited to, at most, performing operations of channel selection according to *Cosatto*. Thus, the proposed combination of *Shigeo* in view of *Cosatto* does not disclose, teach, or suggest at least the above-recited features of claims 25-28.

Accordingly, the proposed combination of *Shigeo* in view of *Cosatto* does not teach at least the above recited limitations of claims 25-28. Therefore, a *prima facie* case establishing an obviousness rejection by *Shigeo* in view of *Cosatto* has not been made. Thus, claims 25-28

are not obvious under proposed combination of *Shigeo* in view of *Cosatto*, and the rejection should be withdrawn.

c. Claims 29-32

Because independent claim 28 is allowable over the cited art of record, dependent claims 29-32 (which depend from independent claim 28) are allowable as a matter of law for at least the reason that the dependent claims 29-32 contain all features/elements of independent claim 28. Accordingly, the rejection to claims 29-32 should be withdrawn.

b. Claim and 33

Applicants respectfully submit that claim 33 is allowable for at least the reason that the proposed combination of *Shigeo* in view of *Parulski* does not disclose, teach, or suggest at least the feature of “assigning a *quality factor* to each key-frame image in each of the at least one sets, the quality factor being *representative of the composition quality* of the analysed key-frame images” as recited in claim 33 (emphasis added).

Shigeo does not disclose, teach, or suggest using at least any type of quality factor being representative of the composition quality of the analysed key-frame images. The Examiner is respectfully referred above to the arguments for allowability of claim 1 which demonstrates that there is no disclosure whatsoever of a quality factor in the *Shigeo*.

Parulski also fails to disclose, teach or suggest at least any type of quality factor, as noted in the Office Action. Accordingly, the proposed combination of *Shigeo* in view of *Parulski* does not teach at least the above recited limitations of claim 33. Therefore, a *prima facie* case establishing an obviousness rejection by *Shigeo* in view of *Cosatto* has not been made. Thus, claim 33 is not obvious under proposed combination of *Shigeo* in view of *Cosatto*, and the rejection should be withdrawn.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-33 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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